

MOTION FILED
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No. 86-1082

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Petitioner,

v.

LARRY WOLLERSHEIM,
Respondent.

Petition For A Writ Of Certiorari To The
Court Of Appeal Of The State Of California,
Second Appellate District

**MOTION FOR LEAVE TO FILE
AND
BRIEF *AMICUS CURIAE* OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE IN SUPPORT OF THE
PETITION FOR WRIT OF CERTIORARI**

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MOTION FOR LEAVE TO FILE
BRIEF AS AMICUS CURIAE

The National Association for the Advancement of Colored People ("NAACP"), hereby respectfully moves this Court for leave to file the attached brief as amicus curiae, in support of the Petition for Writ of Certiorari pursuant to Rule 36.1 of this Court's Rules. The brief amicus curiae is being conditionally filed with this Motion, copies of

which have been served upon all parties.
The written consent of the petitioners
is on file with the Clerk. Respondents
have refused their consent.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF
NATIONAL ASSOCIATION FOR THE
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INTEREST OF AMICUS CURIAE

Amicus Curiae National Association
for the Advancement of Colored People
(NAACP), is an organization dedicated to
the furtherance of racial equality and
social and economic justice in this
country. To promote these ends, the
NAACP and its members engage in activity

protected by the United States Constitution, including petitioning the government for the redress of grievances, marching and demonstrating in peaceful fashion, alerting the community to instances of discrimination, and advocating and organizing concerted action to influence the political process and to spur social change. At times these activities have met with legal action and threats of legal action in state courts. The NAACP has no fear of such legal action so long as the doors of the appellate courts--including this Court--are open to it to vindicate its rights. But if the NAACP were required to post a substantial supersedeas bond in order to gain effective access to the appellate process, it would not be able to do so; neither would many other public interest organizations, small businesses, or most

ordinary citizens. It is for that reason that the NAACP is filing a brief in this case.

The NAACP has had first-hand experience with the effect of an unreasonable supersedeas bond on the appellate process. As a result of boycott activities subsequently held by this Court to be conduct protected by the First Amendment, NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982), a Mississippi trial court assessed damages against the NAACP in excess of \$1 million. Mississippi law required the posting of a supersedeas bond equal to 1-1/4 times the amount of the judgment in order to stay immediate execution of that judgment pending appeal. Because the NAACP could not meet this bond requirement and because immediate execution of the judgment would have bankrupted the organization, the NAACP sought limited

relief in federal court from Mississippi's bond requirements, claiming that the application of those requirements effectively deprived the NAACP of its constitutional rights. Had the federal courts not stayed the application of the bond requirements by enjoining enforcement of the judgment pending appeal to the Mississippi Supreme Court and thereafter to this Court, Henry v. First National Bank of Clarksdale, 595 F.2d 291 (5th Cir. 1979), cert. denied sub nom. Claiborne Hardware Co. v. Henry, 444 U.S. 1074 (1980), the NAACP would not have survived as an organization and could not have vindicated its First Amendments rights in this Court.

The NAACP urges the granting of the petition for certiorari in order that this Court may determine whether the refusal of the California Court of Appeals to stay

execution or reduce the oppressive supersedeas bond violates petitioner's rights under the Due Process clause of the Fourteenth Amendment. The arguments presented herein are identical to the arguments set forth in the NAACP amicus curiae brief that has been filed in support of Texaco, Inc., in Pennzoil Company v. Texaco, Inc., _____ U.S. _____.

SUMMARY OF ARGUMENT

Due Process precludes a state from imposing supersedeas bond requirements that are so oppressive that they effectively deny a litigant access to the state's appellate courts and, thereafter, access to this Court. Even if Due Process does not preclude such bond requirements as to all litigants, it must preclude them as to involuntary state-court defendants whose only available process is appellate review. At a bare minimum,

where fundamental constitutional rights are at issue, a litigant cannot constitutionally be denied access to state appellate courts through application of an oppressive supersedeas bond.

ARGUMENT

I. A State May not Constitutionally Prohibit Meaningful Access To Its Appellate Courts Through Imposition of An Oppressive Supersedeas Bond Requirement

The NAACP acknowledges, of course, that the states are not constitutionally required to provide appellate court review of their trial courts' judgments;¹ on the other hand, it is well-settled that whatever appellate review the states do provide must meet the requirements of Due Process.² The NAACP also acknowledges that Due Process is not necessarily offended by the requirement of a reasonable

1. Lindsey v. Normet, 405 U.S. 56, 77 (1972).

2. See Evitts v. Lucey, 469 U.S. 387, 400-01 (1985). Similarly, even if the state is not required to provide mechanisms for suspension of judgments pending appeal, see Louisville and Nashville R.R. v. Stewart, 241 U.S. 261, 263 (1916), having provided such mechanisms the state must comply with the requirements of Due Process and Equal Protection in permitting litigants to employ those procedures.

supersedeas bond in connection with a stay granted to a losing party pending appeal; indeed, such a bond fairly serves to protect the prevailing party during the appeal process.

But a bond that is so oppressive upon the appealing party that it effectively precludes meaningful review--and is out of all proportion to any necessary protection of the prevailing party's interest--necessarily violates Due Process. In the Henry case, for example, the NAACP would have been bankrupted had it been forced to comply with Mississippi's supersedeas requirements. 595 F.2d at 299-300, 305. Such draconian requirements prevent review as effectively as a rule that simply prohibits appeal altogether and should therefore be held violative of Due Process.

Any other conclusion would contradict

a fundamental precept of our system of jurisprudence--that no party should be precluded access to the courts by virtue of unreasonable requirements which it cannot meet. Under that standard the Church of Scientology of California may be entitled to be free of the California's bond requirements for the same reasons that the NAACP was entitled to be free of Mississippi bond requirements in the Henry case. The important point is that a supersedeas bond is offensive to Due Process whenever it imposes unreasonable, oppressive, and unnecessary requirements as the price of an appeal, no matter the relative wealth or poverty of the would-be appellant. As this Court stated in Boddie v. Connecticut, 401 U.S. 371 (1971), "[j]ust as a generally valid notice procedure may fail to satisfy due process

because of the circumstances of [a particular] defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard." Id. at 380 (emphasis added).

While we believe the principle recognized in Boddie should be controlling in this case, certain decisions subsequent to Boddie suggest that the Due Process right to be heard may be appropriately limited to (1) circumstances in which the party has no remedy other than the judicial forum, or (2) circumstances in which the underlying issue on which the party wishes to be heard involves a "fundamental" right. Thus, in United States v. Kras, 409 U.S. 434 (1973), the majority explained that "Boddie was based on the notion that a State cannot deny

access, simply because of one's poverty, to a "judicial proceeding [that is] the only effective means of resolving the dispute at hand." Id. at 443 (quoting Boddie, 401 U.S. at 376) (emphasis added).³

In addition, the Kras majority thought a debtor's interest enjoyed less Due Process protection than the interest at issue in

Boddie:

Bankruptcy is hardly akin to free speech or marriage or to those other rights, so many of which are imbedded in the First Amendment, that the Court has come to regard as fundamental and that

3. Kras, an indigent, allegedly unable to pay the filing fee required for a voluntary petition in bankruptcy, was thought not to have a Due Process right of access to the courts because he had alternative non-judicial avenues of relief. Boddie, on the other hand, involved indigent parties seeking a divorce, a remedy available to them only in court. Comparing these two situations, the Kras majority stated:

In contrast with divorce, bankruptcy is not the only method available to a debtor for the adjustment of his legal relation-

demand the lofty requirement of a compelling governmental interest before they may be significantly regulated. See Shapiro v. Thompson, 394 U.S. 618, 638 (1969). Neither does it touch upon what have been said to be the suspect criteria of race, nationality, or alienage.

409 U.S. at 446 (citation omitted).

By contrast, this Court more recently found unconstitutional Connecticut's requirement that the costs of blood tests used to disprove paternity be charged against an indigent defendant who could not afford the tests. Lacking those tests, the defendant was adjudged to be the father. Little v. Streater, 452 U.S. 1 (1981). In distinguishing the Kras and Ortwein⁴ cases, this Court observed that

ship with his creditors. The utter exclusiveness of court access and court remedy, as has been noted, was a potent factor in Boddie.

Kras, 409 U.S. at 445

4. In Ortwein v. Schwab, 410 U.S. 656 (1973), a majority of this Court determined that welfare recipients' Due Process rights

[o]ur decisions in Kras and Ortwein emphasized the availability of other relief and the less "fundamental" character of the private interests at stake than those implicated in Boddie. Because appellant has no choice of an alternative forum and his interests, as well as those of the child, are constitutionally significant, this case is comparable to Boddie rather than to Kras and Ortwein.

Id. at 16 n.12 (emphasis added).

There are several important implications of Boddie and its progeny for the present case. First, it appears that an oppressive supersedeas bond may offend Due Process where its imposition effec-

were not violated by a state's requirement that they file a \$25.000 fee in order to pursue a judicial appeal of agency determinations marginally adjusting their benefits. In so holding, this Court again relied upon the existence of non-judicial "alternatives, not conditioned on the payment of fees," through which the appellants had been able to seek relief. Id. at 659. The Court also noted that, as in Kras the interest asserted by these welfare litigants was of less constitutional significance and was therefore entitled to fewer Due Process protections than that at issue in Boddie. Id. at 659.

tively and unreasonably denies the right to be heard.

Second, even if such a bond does not violate the Due Process rights of every would-be litigant who is unable to satisfy the bonding requirements, it surely does so in the case of an involuntary state-court defendant who has no alternative remedy or forum for his claim except the state's courts. In other words, a state may afford Due Process through different procedures or forums, but if the only process the state offers to a party for vindication of its claims is the courts, meaningful access to those courts must be afforded.⁵ Thus, every involuntary state-

5. As the Court stated in Boddie:

(T)he successful invocation of this governmental power (the judiciary by plaintiffs has often created serious problems for defendants' rights. For at that point, the

court defendant--like the NAACP in Henry and the Church of Scientology of California here-- has a Due Process right that any state-created judicial appeal be free from an oppressive or impossible bond requirement that effectively denies that defendant a meaningful opportunity to be heard.⁶

judicial proceeding becomes the only effective means of resolving the dispute at hand and the denial of defendants' full access to that process raises grave problems for its legitimacy.

Boddie, 401 U.S. at 376 (emphasis added). The Court made this same point in Streater, in which it stressed that a defendant sued in state court for paternity payments had "no choice of an alternative forum" in which to vindicate his interests. Streater, 452 U.S. at 16 n.12; see also Kras, 409 U.S. at 444. Likewise in Ortwein, 410 U.S. at 659-60, the Court stressed that appellants had been provided a hearing in a non-judicial forum, an alternative not conditioned on payment of a fee, in which the appellants were able to press their claims.

6. Relying on Boddie, Kras, and Ortwein, the Third Circuit in Lecates v. Justice of the Peace Court No. 4, 637 F.2d

The final implication of the Boddie line of cases is that at a bare minimum Due Process includes a right to be free of an oppressive bond where the merits of the appeal involve "fundamental rights." While we do not believe that Due Process protections may be limited to certain "fundamental rights,"⁷ nevertheless it is important that the Court at the very least reaffirm in this case the special procedural protection those rights enjoy.

898 (3d Cir. 1980), found unconstitutional as applied Delaware's requirement that an indigent defendant post a surety bond in order to secure a trial de novo in Superior Court following an adverse determination by a justice of the peace. In reaching that determination, the Court found critical the state-court defendant's lack of alternative avenues for relief. Id. at 908-09.

7. The justification for such line-drawing is certainly not in the Constitution. The Fourteenth Amendment broadly commands the states to afford parties Due Process in every situation in which it proposes to deprive them of life, liberty,

The fundamental rights described in Kras involve numerous matters of great interest to the NAACP, including free speech, right to travel, and issues involving racial discrimination. 409 U.S. at 446. Hence, if the Court does nothing else in this case, it should make clear that the Constitution will not permit oppressive state bond requirements to undermine a right of appeal, at least where that appeal involves fundamental constitutional rights, as it did in Henry. Situations comparable to the facts involved in Henry are arising with

or property; the Amendment nowhere limits the Due Process protection to cases involving "fundamental rights."

some frequency,⁸ and it is vital that the

8. For example, quite recently the Mississippi chapter of the NAACP sponsored a boycott of white businesses and public schools in Indianola to respond to apparent racial discrimination in the local school system. United Press International, Apr. 16, 1986, Section Regional News (available on NEXIS). State and local NAACP chapters are also involved in a boycott of white merchants in the prosperous suburb of Dearborn, Michigan, which excluded nearby blacks from a local park by means of a "residents only" rule, N.Y. Times, Oct. 10, 1986, at A14, col. 3; a boycott of Shell Oil products to protest that company's investments ties to South Africa, Platt's Oilgram News, Section United States, vol. 64, no. 161, at 3; a boycott of white businesses in Baton Rouge, Louisiana, to protest allegedly racially motivated grievances lodged against a black school principal, "Local NAACP Board Votes to Boycott White Merchants," Associated Press, May 29, 1986 (available on NEXIS); and a school boycott in a rural Georgia district to protest the lack of minority teachers, "Lack of Black Teachers Sparks Rural Georgia School Boycott," Associated Pres, Aug. 23, 1986, Section Domestic News (available on NEXIS). The NAACP has also been sued for defamation for its criticism of a police officer for unnecessary brutality in effecting an arrest. NAACP v. Moody, 350 So. 2d 1365 (Miss. 1977).

rule adopted here leave open the opportunity for parties to protect their access to the appellate courts in such cases.⁹

In yet another example, three senior citizens seeking free access to a local community center for NAACP meetings staged a lawnchair protest outside the mayor's drugstore to discourage business. The three were then arrested under a Mississippi anti-boycott statute enacted as a result of the civil rights actions at issue in Henry. "Lawn Chair Protesters May Be Back When Its Cooler," Associated Press, Aug. 26, 1986, Section Domestic News (available on NEXIS); "Store Boycott Spurs Constitutional Fight," L.A. Times May 23, 1986, Part 1, at 19, col. 1. After repeated arrests, the bond on one of the participants, the president of the local NAACP chapter, rose to \$10,000, forcing the group to abandon the protest temporarily for financial reasons. Although the state Attorney General's office declined to prosecute, private civil action by the mayor remains possible. "Lawn Chair Protesters May Be Back When Its Cooler," Associated Press, Aug. 26, Section Domestic News.

9. All of these situations present potential Henry problems. Inherent in any case in which the NAACP must defend a state court action for damages arising from its expressive activities is the potential for a crippling, yet unconstitutional, judgment subject to immediate

CONCLUSION

For the reasons discussed above,
amicus curiae National Association for
the Advancement of Colored People urges
this Court to grant petitioner Church's
petition for certiorari.

Respectfully submitted,

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enforcement unless the NAACP posts an
equally crippling supersedeas bond to
preserve an appeal made virtually irrele-
vant by the bond itself.

